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SUPREME COURT, U.S.

ORIGIONAL

78-6232

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1978

NO. _____

RAY L. WHITE,

Petitioner;

aginst,

STATE OF ARIZONA,

Respondent.

IN PROPRIA PERSONA

PETITION FOR WRIT OF CERTIORARI TO THE

ARIZONA SUPREME COURT

Prepaired by;

Richard R. Sauter, Esq.
Jailhouse Lawyer
Arizona State Prison
P.O. Box B 32610
Florence, Arizona 85232

Petitioner;

Ray L. White
P.O. Box B 37590
Florence, Arizona 85232

In Propria Persona

I

JURISDICTION

This courts jurisdiction is invoked pursuant to 28 U.S.C. 1257.

II

OPINION BELOW

Petitioners application for Special Action was denied on the 30th day of January,1979 (without an evidentuary hearing). The order denying said application is attached hereto as Appendix A.

III

QUESTION PRESENTED

WHETHER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT TO THE U.S. CONSTITUTION EXTENDS TO PAROLE RELEASE DETERMINATIONS AND,IF SO, WHETHER THE SAFEGUARDS CURRENTLY AVAILABLE UNDER APPLICABLE ARIZONA LAW ARE CONSTITUTIONALLY ADEQUATE?

IV

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONSTITUTION:

14th AMENDMENT.

ARIZONA CONSTITUTION:

Article 2, Section 4.

V

REASON WRIT SHOULD BE GRANTED

THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT EXTENDS TO PAROLE DETERMINATIONS BE WHAT THE SAFEGUARDS CURRENTLY AVAILABLE UNDER APPLICABLE ARIZONA LAW ARE CONSTITUTIONALLY INADEQUATE.

At the outset it should be noted that the U.S. Court of Appeals for the Ninth Circuit,has succinctly stated,many years ago,that determinations by a parole board cannot be arbitrary, basically unfair, or invidously discriminatory.

The court also made it clear that the time an inmate must serve in prison must be determined in a manner consistant with the federal constitution.

[illegible]HURM v. CALIFORNIA ADULT AUTHORITY,(9th Cir. 1968) U.S. 446,449,450.

Other courts holding that due process applies to parole determination hearings are;

.....

1. HILL v. ATTORNEY GENERAL OF THE U.S.,(3rd Cir. 1977) 550 F.2d 901.

2. FRONCZAK v. WARDEN,EL RENO REFORMATORY,(10th Cir. 1977) 553 F.2d 1219.

In the present case petitioner appeared before the parole board on the 13th dat of December,1978,at which time his application for parole was denied.

In denying parole the parole board failed to:

(a) give petitioner advance written notice of the factors/criteria that the board would consider at the hearing.

(b) keep a record of the hearing that could be reduced to written form in order for petitioner to have proper judicial review.

(c) furnish petitioner with a full and fair explination of it's reason(s) for denying petitioner parole.

(d) publish and distribute to petitioner it's guidelines (factor/criteria) relied on in parole determination hearing or mandated by the Administrative Procedure Act.

(e) afford petitioner an opportunity to inspect his prison file which they utilized in determining whether parole will be granted, and failed to advise him of all adverse information upon which they relied on in the determination,in lieu of allowing him to inspect his file.

(f) advise petitioner reason(s) for denial so that he could appropriately adjust his future conduct, to enable him to be granted parole at his next hearing.

(g) reasons for denial of parole herein do not substantially relate to the board guidelines,(factor/criteria) if any,they relied on in determining petitioners application for parole.

Petitioner submits that the above sited failure by the Arizona Parole Board falls within the orbit of; INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX v. GREENHOLTZ, 23 CRL 2265, 576 F. 2d 1274.

VI

CONCLUSION

Because of the foregoing reasons,the Writ of Certiorari should be granted.

Copy of the foregoing Pet. for Writ of Cert. mailed this 14th day of February ,1979 to;

Respectfully submitted

Ray L. White

Office of the Attorney General
200 State Capitol Building
Phoenix,Arizona 85007

I,Ray L. White,declair under penalty of perjury that the foregoing is true and correct to the bast of my knowledge and belief.

Ray L. White

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 14 DAY OF February ,1979

Robert J. Stout
NOTARY PUBLIC

My Commission Expires June 19, 1979

CLIFFORD H. WARD
CLERK

Supreme Court
STATE OF ARIZONA
Phoenix
85007

MARY ANN HOPKINS
CHIEF DEPUTY CLERK

January 31, 1979

RAY L. WHITE,

Petitioner,

vs.

STATE OF ARIZONA,

Respondent.

Supreme Court
No. M-245

The following action was taken by the Supreme Court of the State of Arizona on January 30, 1979 in regard to the above-entitled cause:

"ORDERED: The Court declines to accept jurisdiction of the Petition for Special Action."

CLIFFORD H. WARD, Clerk
By Anna L. Cates
Deputy Clerk

TO: Ray L. White, Arizona State Prison, Box B-37590, Florence, Arizona 85007
Hon. Robert K. Corbin, Attorney General, 200 State Capitol Building, Phoenix, Arizona 85007 Attn: Robert F. Ellig, Assistant Attorney General

APPENDIX A.

Supreme Court, U. S.
FILED
MAR 22 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-6232

RAY L. WHITE,

Petitioner,

-vs-

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT K. CORBIN
Attorney General

FRED W. STORK, III
Assistant Attorney General
State Capitol Building
Phoenix, Arizona 85007

Attorneys for Respondent

STATEMENT OF FACTS

Petitioner Ray L. White initially filed an original petition for special action in the Supreme Court of the State of Arizona. He filed as an indigent and was not represented by an attorney. White's State Court petition did not purport to invoke any particular state jurisdictional authority. However, it is apparent that White proceeded under 17A, Arizona Revised Statutes, Special Actions, Rules of Procedures. The Arizona Attorney General on behalf of the State of Arizona filed a response to White's petition for special action in which the Attorney General asked the State Supreme Court to dismiss the petition.

On 31 January 1979, the Arizona Supreme Court entered its order declining to accept jurisdiction of the petition for special action. White has filed no other suits before any Arizona Court raising the issues presented herein.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner invokes the jurisdiction of the United States Supreme Court pursuant to 28 U.S.C.A. § 1257.

28 U.S.C.A. § 1257 states in pertinent part:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The jurisdictional prerequisite in this case, therefore, is a final judgment or decree from the highest court in Arizona. This court has stated in the past that it will not be bound by the

state's characterization of the finality of the judgment. Cole v. Violette, 319 U.S. 581 (1943); Richfield Oil Corporation v. State Board of Equalization, 329 U.S. 69 (1946). Also, the entire record may be reviewed to determine whether further proceedings may be had. Richfield Oil Corporation v. State Board of Equalization, supra; Local No. 438 Construction and General Laborer's Union v. Curry, 371 U.S. 542 (1963); Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 479 note 8 (1975). However, the requirement that there be a final judgment or decree has been consistently upheld. Richfield Oil Corporation v. State Board of Equalization; Local No. 438 Construction and General Laborer's Union v. Curry; Cox Broadcasting Corporation v. Cohn, supra.

There is no final Arizona judgment or decree in this case. The special action procedure in Arizona is the successor in both the trial and appellate courts to the old extraordinary writs of certiorari, mandamus and prohibition. 17A, Arizona Revised Statutes, Special Actions, Rules of Procedure, Rule 1 states in part:

> (a) Relief previously obtained against a body, officer, or person by writs of certiorari, mandamus, or prohibition in the trial or appellate courts shall be obtained in an action under this Rule, and any reference in any statute or rule to any of these writs, unless excepted in the next subsection, shall be deemed to refer to the special action authorized under this Rule.

The Arizona Supreme Court has repeatedly held that when a matter is brought to it in an original petition for special action, it will exercise its discretion when deciding whether to grant the petition and thus consider the case on its merits. See Caruso v. Superior Court, 100 Ariz. 167, 412 P.2d 463 (1966); Jolly v. Superior Court, 112 Ariz. 186, 540 P.2d 658 (1975); Nataros v. Superior Court, 113 Ariz. 498, 557 P.2d 1057 (1976).

In this case the Arizona Supreme Court did not decide the case on the merits. On the contrary, it simply exercised

its discretion and decided not to consider the case on the merits. This does not mean that White was left without any remedy. The question presented in this petition makes it clear that White's underlying objective is to obtain a judgment to the effect that he was denied his right to due process of law at his parole release hearing. The Arizona appellate courts have held that this is an appropriate matter to bring before the Arizona trial courts [superior courts] and that this may be done through a petition for special action. See Foggy v. Arizona Board of Pardons and Paroles, 108 Ariz. 470, 501 P.2d 942 (1972); State ex rel., State Board of Pardons and Paroles v. Superior Court, 12 Ariz.App. 77, 467 P.2d 917 (1970). White could, therefore, have brought a petition for special action either in the Superior Court for Pinal County which was the county where he was confined or the Superior Court for Maricopa County where the Board of Pardons and Paroles has its offices.

The Arizona Supreme Court's decision not to accept the petition for special action in this case is not inconsistent with Foggy v. Arizona Board of Pardons and Paroles and State ex rel., State Board of Pardons and Paroles v. Superior Court, supra. Sound principles of judicial administration suggest that where, as in this case, there are issues of fact which must be resolved through testimony the better practice would be to have the case initially considered by a court organized to conduct trials on the facts. There is nothing, either in the Arizona Supreme Court's Order or in the general law of the State of Arizona which would preclude White from raising the issues addressed here in a petition for special action in an appropriate superior court.

It has been said that, "a 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United

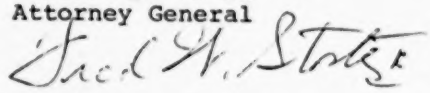
States, 324 U.S. 229, 233, (1945). The Arizona Supreme Court has not decided that White's rights have been adequately safeguarded under Arizona law and it has not decided that they have not been adequately safeguarded. Its decision is nothing more than a statement that White chose the wrong forum to initiate his suit. As such, the Arizona Supreme Court's Order is not a final judgment or decree as required by 28 U.S.C.A. 1257. This court, therefore, is without jurisdiction to grant the Writ of Certiorari.

CONCLUSION

For these reasons, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT K. CORBIN
Attorney General



FRED W. STORK, III
Assistant Attorney General

Attorneys for Respondent

STATE OF ARIZONA)
)ss.
County of Maricopa)

I hereby certify that on this 19th day of March 1979, three copies of Respondent's Brief in Opposition on Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona were mailed, postage prepaid, to Ray White, P.O. Box 837590, Florence, Arizona 85232, petitioner. I further certify that all parties required to be served have been served.

Fred W Stork

FRED W. STORK, III

SUBSCRIBED AND SWORN to before this 19th day of March 1979.

Debbie L Moore nee Schwark

NOTARY PUBLIC

My commission expires:

6-12-82